

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000033-001 DT

05/17/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

BARRY D ETHINGTON (001)

THOMAS M BAKER

MESA CITY COURT
REMAND DESK-LCA-CCC
HON J MATIAS TAFOYA, PRESIDING
JUDGE
245 2 2ND STREET
MESA AZ 85201

RECORD APPEAL RULE / REMAND

MESA MUNICIPAL COURT

Cit. No. #2003007374

Charge: 1) PAWN SHOP-REPORTING VIOLATION

DOB: UNK

DOC: 11/24/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

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Facts

The facts in this case are not in dispute. Appellant, Barry D. Ethington, is a licensed pawnbroker in Mesa, Arizona. On November 24, 2002, one of Appellant's employees, who is not a pawnbroker, failed to submit a camcorder's serial number in a routine report to the police, as required by Arizona law. Appellant, who was not present during his employee's omission, was charged with violating A.R.S. §44-1625(C)(5). Appellant, having timely filed his Notice of Appeal, now brings the matter before this court.

Issue & Analysis

The only issue before this court is whether the crime proscribed in A.R.S. §44-1625(C)(5) is one of strict liability, thereby making Appellant criminally liable for the omission of a serial number in a routine report to the police, irrespective of the fact that the omission was that of Appellant's employee. A.R.S. §44-1625 states, in relevant part:

- A. A **pawnbroker shall make a true, complete and accurate report** each day of each article the pawnbroker receives through a reportable transaction. The report shall be delivered within two business days to the sheriff or the sheriff's designee of the county in which the pawnbroker is licensed by mail, hand delivery or electronic means as approved by the sheriff or the sheriff's designee. For the purposes of this subsection "electronic means" means a computer diskette or modem.
- B. The **pawnbroker shall make the report** of each item received through a reportable transaction on the form provided or approved by the sheriff or the sheriff's designee.
- C. The report form provided or approved by the sheriff or his designee **shall include** at least all of the following:
 - 1. The last, first and middle name of the pledgor or seller.
 - 2. The permanent address and telephone number, if applicable, of the pledgor or seller.
 - 3. The physical description of the pledgor or seller including height, weight, hair and eye color, sex, race and date of birth.

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4. The number and type of the identification document presented by the pledgor or seller.
5. An accurate, legible description of each item pledged or sold, including the manufacturer's name, model number, serial number, caliber, size, type of item and any owner applied number, inscription or monogram.
6. The pawnbroker's name and address and the clerk's initials or identifying number.
7. The date and time of the initial pawn or purchase transaction.
8. The type of transaction and initial pawn ticket number.
9. A fingerprint of the pledgor or seller. [emphasis added]

There is no exception within this statute that applies to the acts of an employee. The lawmakers were aware that pawnbrokers have employees that receive the pledged items and submit the reports to local law enforcement. Nonetheless, Arizona law holds the pawnbroker, not the employee, liable for omissions in the reports, including omissions by agents or employees of the pawnbroker. Otherwise, it would open the door for an unscrupulous pawnbroker to have his/her employees receive all pledged items, removing the pawnshop's items from the eye and arm of the law - with impunity. The pawnbroker is strictly liable for the failure to submit pledge information from items received in his/her pawnshop - regardless of who submitted the report - as is evidenced by the patent wording of the statute.

A court's primary goal when interpreting a statute is to give effect to the legislature's intent.¹ Strict liability will only be found where there is a clear legislative intent not to require any degree of *mens rea*.² Statutory language is the best indicator of that intent and courts shall give terms "their ordinary meanings, unless the legislature has provided a specific definition or the context of the statute indicates a term carries a special meaning."³ Again, A.R.S. §44-1625 states, in relevant part:

A. A pawnbroker shall make a true, complete and accurate report each day of each article the pawnbroker receives...

C. The report...shall include at least all of the following:

5. ...serial number...[emphasis added]

¹ *Kessen v. Stewart*, 195 Ariz. 488, 490, 990 P.2d 689, 691 (App. 1999); See *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834 (1990); *Martin v. Martin*, 156 Ariz. 452, 457, 752 P.2d 1038, 1043 (1988).

² *State v. Jennings*, 150 Ariz. 90, 94, 722 P.2d 258, 262 (1986); *Spitz v. Municipal Court*, 127 Ariz. 405, 407, 621 P.2d 911, 913 (1980).

³ *Kessen*, 195 Ariz. at 491, 990 P.2d at 692, quoting *Wells Fargo Credit Corp. v. Tolliver*, 183 Ariz. 343, 345, 903 P.2d 1101, 1103 (App.1995).

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The language of A.R.S. §44-1625 is unequivocal; a pawnbroker is responsible for submitting this report to the sheriff. To hold otherwise would completely ignore the plain language of the statute and disregard logical reasoning. Further, the violations statute for pawnbrokers, A.R.S. §44-1631, clearly shows that there is no legislative intent to require any degree of mens rea. A.R.S. §44-1631 states:

- A. A person who knowingly violates § 44-1622 is guilty of a class 1 misdemeanor.
- B. **A person who violates** § 44-1623, 44-1624 or **44-1625**, § 44-1626, subsection B or C or § 44-1630 is guilty of a class 1 misdemeanor.
- C. A person who knowingly charges and collects interest at a rate that is greater than permitted under § 44-1626, subsection A is guilty of a class 6 felony.
- D. A person who violates § 44-1627 is guilty of a class 6 felony.
[emphasis added]

A.R.S. §44-1631(A) and (C) require a specific *mens rea* - “knowingly” – to violate other pawnbroker statutes. A.R.S. §44-1631(B) does not list a mental state to violate A.R.S. §44-1625. A.R.S. §13-202(B) states:

If a statute defining an offense does not expressly prescribe a culpable mental state that is sufficient for commission of the offense, no culpable mental state is required for the commission of such offense, and **the offense is one of strict liability** unless the proscribed conduct necessarily involves a culpable mental state. If the offense is one of strict liability, proof of a culpable mental state will also suffice to establish criminal responsibility.
[emphasis added]

Therefore, I must conclude that A.R.S. §44-1625 is a strict liability offense, which may be committed by acts or omissions of an employee, and attributed to the pawnbroker.

IT IS THEREFORE ORDERED affirming the findings of guilt and sentences imposed by the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa Municipal Court for all further, if any, and future proceedings.

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/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT